# TIMES PUBLISHING BHD. & ORS. v. S. SIVADAS

[A.C.J. (Lai Kew Chai J.) July 22, 1985]

[Singapore – Suit No. 5888 of 1984]

*Defamation – Libel – Written representations to clerk of Parliament – Claim of absolute privilege – Damages and injunction.*

*Parliamentary proceedings – Select Committee – Letter to Clerk of Parliament – Whether absolute privilege – Parliament (Privileges, Immunities and Powers) Act (Cap. 49), ss. 3(1) & 4 – Standing Order 98(13).*

*Practice and Procedure – Libel – Claim for damages and injunction – Absolute privilege – Striking out statement of claim – Plain and obvious case – Arguable, difficult and important point of law – Attorney-General as amicus curiae – Parliamentary privilege – R.S.C. 1970, O.18 r. 19(2).*

This appeal to the Judge in chambers is against the decision of the Assistant Registrar, with costs dismissing the defendant's application to strike out the amended statement of claim on the ground that it disclosed no reasonable cause of action. The matters complained of were contained in a letter of the defendant dated February 7, 1984, and addressed to the Clerk of Parliament in response to the invitation of Parliament for written representations from the public on the Companies (Amendment) Bill. The plaintiffs have brought these proceedings against the defendant claiming damages and an injunction to restrain him from further repeating or publishing certain rather serious libellous statements concerning them. The defendant contended that his written representations to the Clerk of Parliament were part and parcel of proceedings in Parliament and were not to be impeached or questioned in any Court or any other place out of Parliament. The defendant claimed absolute privilege. Being dissatisfied with the decision of the Assistant Registrar, he now appeals to the Judge in chambers.

**Held**, dismissing the appeal: (1) the submissions for the plaintiff, though weak, should not be dismissed out of hand without a trial in the course of which the Court may like to call for the appearance of the Attorney-General as *amicus curiae*;

(2) the Statement of Claim has raised an arguable, difficult and important point of law. For this reason also, the pleading as a matter of practice should not be struck out;

(3) the absolute privilege of "proceedings in Parliament" within the meaning of that expression under s.4 of the Parliament (Privileges, Immunities and Powers) Act, attaches to the written representations submitted to the Clerk of Parliament by a member of the public in response to an invitation of a Select Committee of Parliament.

*Cases referred to:*

(1) *The Hsing An* [1974] 1 M.L.J. 45, 48.
(2) *Lake* v. *King* 1 Wms, Saund 131; 85 E.R. 137.
(3) *Goffin* v. *Donnelly* (1881) 6 Q.B.D. 307.
(4) *Rivlin* v. *Bilainkin* [1953] 1 Q.B. 485.

APPEAL IN CHAMBERS.

*Gopalan Nair* for the appellants/defendant.
*Denis Murphy* for the respondent/plaintiff.

*Cur. Adv. Vult.*

**Lai Kew Chai J.** : In these proceedings, the plaintiffs are claiming against the defendant damages and an injunction to restrain him from further repeating or publishing certain rather serious libellous statements concerning them. I do not propose repeating the libellous statements in these Grounds of Decision because I do not think that I should unwittingly or unnecessarily cause any further hurt to any person. The matters complained of were contained in a letter of the defendant dated February 7, 1984 and addressed to the Clerk of Parliament in response to the invitation of Parliament for written representations from the public on the Companies (Amendment) Bill.

In November last year, the defendant by a Summons-in-Chambers applied for an order that the amended Statement of Claim be struck out on the ground that it disclosed no reasonable cause of action. In an application on this ground, no evidence, including affidavit evidence, is admissible. A court will only look at the pleading under question and will assume that the facts pleaded are true and undisputed: see Order 18 rule 19(2) of the Rules of Supreme Court, 1970 and *The Hsing An*[1] per Chua J. After the application was canvassed before the learned Assistant Registrar, he dismissed the defendant's application with costs. Being dissatisfied with the decision of the learned Assistant Registrar, the defendant brought an appeal which came up before me. At the conclusion of the adjourned hearings of the appeal in May this year, I dismissed the appeal with costs. Although there is no appeal against my decision in this interlocutory matter, I now give my reasons for doing so.

The summary procedure to strike out a pleading will only be used in cases which are plain and obvious or where the case is clear beyond doubt. Accordingly, as long as a statement of claim discloses some question fit to be tried, even if it is a question of law, the mere fact that the case is weak or may not be likely to succeed at the trial is not sufficient ground for striking out the statement of claim as disclosing "no" reasonable cause of action: see Vol. 37 *Halsbury's* Laws of England, 4th edn., paragraph 432 and the cases cited in note 10. It

was on this basis that I viewed the submissions canvassed by counsel on both sides.

Counsel for the defendant argued that the written representations submitted to the Clerk of Parliament were part and parcel of "proceedings in Parliament" within the meaning of that expression in section 4 of the Parliament (Privileges, Immunities and Powers) Act, Cap 49 (hereinafter referred to as "the Act") and that, accordingly, they were not "to be impeached or questioned in any Court... or any other place whatsoever out of Parliament." Section 4 is substantially similar to Article 9 of the English Bill of Rights (1688). In other words, the written representations were made on an occasion of absolute privilege. The defendant relied greatly on the decision in *Lake* v. *King*.[2] A Committee in Parliament in England had been formed to look into grievances of the populace. The defendant published a petition to the Committee and parts of the petition were alleged by the plaintiff to be defamatory of the plaintiff. It was held in that case that the printing of a false and scandalous petition to a Committee of the House of Commons and delivering copies thereof to members of the Committee was justifiable because it was in the order and course of proceedings in Parliament of which the Courts should take judicial notice.

It was pointed out that the written representations in this case were published to the Clerk of Parliament, who received them on behalf of the Select Committee, and thereafter they came within the control and direction of the Select Committee which under Standing Order 98(13) "may at its discretion...reject any irrelevant representation."

I now turn to the submissions made on behalf of the plaintiffs. Counsel for the plaintiffs conceded that the privilege of Parliament in respect of its own proceedings extended to its Select Committee and that all the actions of the Committee members were absolutely privileged. But in the case of a member of the public who was not a Member of Parliament, counsel for the plaintiffs contended that he could not claim the protection of absolute privilege in respect of proceedings before a Select Committee unless (1) he had appeared before the tribunal as a witness; and (2) the Select Committee and the enquiry with which it enquires or adjudicates upon is acting in a judicial capacity in a manner similar to Courts of Justice.

*Lake* v. *King* (*supra*) was distinguished on the ground that defendant/petitioner in that case had appeared as a witness and that the Committee, unlike the Select Committee in this case, was quasi-judicial in character.

For support of the first part of these submissions, my attention was drawn to section 17(1) of the Act under which it is provided that, subject to two provisoes which are irrelevant for present purposes, no person who gives evidence before Parliament or any committee shall be liable to any civil or criminal proceedings or damages by reason of anything which he may have said in such evidence. This sub-section incorporates the rule of law as enunciated in *Goffin* v. *Donnelly*.[3]

In support of the second part of these submissions, reliance was placed on what appeared to be the *raison d'etre* in the case of *Goffin* v. *Donnelly* (*supra*). In that case, the House of Commons ordered a Select Committee to be appointed to inquire into and report on the circumstances relating to the suspension of a certificate by the Science and Art Department of the plaintiff who was a school master. The Select Committee in that case has power to send for persons, papers and records just as the Select Committee has in this case under Standing Order No. 98(2). In the course of the enquiry the Committee summoned the defendant in that case as a witness, administered an oath and heard his evidence. The words complained of were extracts from his evidence. Although it was held that the statements were absolutely privileged, counsel for the plaintiffs submitted that those statements were similar to the statements of witnesses made in a Court of Justice to which absolute privilege attaches. Counsel appears to submit that absolute parliamentary privilege attaches only if the Select Committee is judicial or quasi-judicial in character.

I had reservations about the soundness of these submissions, which though I considered weak I was not prepared to dismiss out of hand without a trial in the course of which the Court may like to call for the appearance of the learned Attorney-General as *amicus curiae*, seeing that this case touches on parliamentary privilege and, perhaps, in view of section 3(1) of the Act, materials on the privileges of the United Kingdom Parliament bearing on this case may be made available.

The Statement of Claim in this case has raised an arguable, difficult and important point of law. For this reason also, the pleading as a matter of practice should not be struck out: see Vol. 37 *Halsbury's* Laws of England, 4th edn., para. 432 (*supra*).

There is no direct authority bearing on the issue of law raised in this case. The arguably similar case is *Rivlin* v. *Bilainkin*.[4] Dr. Lilian Rivlin started proceedings against the defendant, Mr. George Bilainkin, her former husband, for alleged defamation against her. An interim injunction was granted against the defendant. The defendant, ignoring or in defiance of the injunction, went to the House of Commons and handed to the messenger of the House five communications for delivery to named Members of Parliament. The communications repeated the matters complained of in the slander proceedings. The defendant, it appeared, wanted a Select Committee to consider his grievance. But it was equally apparent that the document was initiated by him and it was not in response to any invitation from the House of Commons. The plaintiff applied to the Judge in chambers for an order of committal against the defendant on whose behalf it was argued that it was a privilege of Parliament that all members were entitled to be approached in the House of Parliament by anyone desiring parliamentary action and that anyone who impeded such approach was in breach of parliamentary privilege.

Not unexpectedly, McNair J. (as he then was) ruled that no question of parliamentary privilege arose. He said at page 488: "... and particularly, I rely on the fact that the publication was not connected in any way with any proceedings in that House." It seemed to me that drawing on the implications of this decision, much could be said that written representations to a Select Committee in response to an invitation of Parliament would constitute them as a part of proceedings in Parliament.

Notwithstanding what I had set out earlier in these Grounds of Decision, I should perhaps indicate the view of the law which I tentatively hold at this interlocutory stage, although what follows hereafter should be subject to full arguments, including submissions from the learned Attorney-General at the trial.

A consideration of the term "proceedings in Parliament" must include a reference to *Erskine May's* Parliamentary Practice, 20th edn., in which the following passage appears at page 92:

"The primary meaning, as a technical parliamentary term, of 'proceedings' (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches its decision."

Although in the following two pages of *Erskine May* it is stated that "the meaning of the term 'proceedings in Parliament' has not been expressly defined by the courts" in the United Kingdom, it seems to me that any matter which has a close relationship with the affairs of Parliament or its decision-making process attracts the doctrine of absolute parliamentary privilege.

In my opinion, the absolute privilege of "proceedings in Parliament" within the meaning of that expression under section 4 of the Act attaches to the written representations submitted to the Clerk of Parliament by a member of the public in response to an invitation of a Select Committee of Parliament. This may be garnered by implication from *Rivlin* v. *Bilainkin* (*supra*). I hasten to add that the absolute privilege is not a privilege to be malicious, but a privilege granted so that such written representations should be exempt from any inquiry whether they were prompted by malice or not, it being for the public interest that such written representations, be they true or false, should be made to Parliament or a Select Committee of Parliament without any apprehension of subsequent legal proceedings. If they are false, it is for Parliament or the Select Committee, as the case may be, to reject or otherwise deal with the false representations.

*Appeal dismissed.*

Solicitors: *Gopalan Nair; Godwin & Co.*

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## LAM CHIAK v. PUBLIC PROSECUTOR

**[O.Cr.J. (Thean J.) August 22, 1985]**
**[Singapore – Criminal Motion No. 34 of 1985]**

*Criminal Law and Procedure – Search warrant – Warrant did not specify period in which it was to remain in force – Whether invalid – Criminal Procedure Code (Cap. 113), s.62(2).*

This is an application for an order that the execution of the Warrant to Search No. 0172 dated November 3, 1984 ("the warrant") be declared invalid and the goods seized pursuant to the warrant be returned to the applicant on the ground that the warrant was not in force on the date of execution. The warrant was issued by a magistrate upon a complaint made to him that an offence under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188) had been committed. The warrant authorised and required the Officer named therein to search for articles specified therein at the